UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,050	10/12/2001	David Ellis	S85.12-0001	1800

27367	7590	05/17/2006

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EXAMINER
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ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev 10/03)

	Application No.	Applicant(s)	
Office Action Summary	09/977,050	ELLIS ET AL.	
	Examiner	Art Unit	
	C. Michelle Tarae	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>27 February 2006</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-18</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-18</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   The following is a Final Office Action in response to the communication received on February 27, 2006. Claims 1-18 are now pending in this application.

Response to Amendment

2.   No claims have been amended, added or canceled.

Response to Arguments

3.   Applicant's arguments have been fully considered, but are found unpersuasive. In the Remarks, Applicant argues that Higgins et al. does not teach accessing project data consisting of a plurality of *actions to be performed*.

In response to the argument, Examiner respectfully disagrees. The system of Higgins et al. helps to manage risk for software development projects, where the projects include actions such as programming or writing a certain quantity of software code (col. 3, lines 44-45; col. 5, lines 28-40; col. 6, lines 15-16) and as well as maintaining certain staffing levels (col. 5, lines 51-58; col. 6, lines 14-15). Thus, the actions to be performed in Higgins et al. are the writing or programming of software code as well as the maintaining of a certain level of staff. Higgins et al. additionally discloses the different phases of a software development project to include design, coding and testing (col. 6, lines 13-14), which are also actions associated with the software development project. On page 2 of the Remarks, Applicant argues that the system requirements, which are used as inputs to the risk analysis system, are not

related to processes which might take place during the course of the project. Examiner

respectfully disagrees with this observation as the metrics corresponding to the source

lines of code (SLOC), for example, are a direct correlation to how much source code

has been written or programmed (Figure 2), which is an action performed as part of the

project. That the system of Higgins et al. uses the metric of SLOC, for example, to

reflect an action performed in the project is relevant to the claims as currently recited

since the claims as currently recited do not preclude the use of metrics to represent

actions to be performed.

In conclusion, based on the evidence supplied above, Examiner respectfully

submits that Higgins et al. does disclose accessing project data consisting of a plurality

of *actions to be performed*.

Applicant's subsequent arguments in the Remarks are based on the main

argument addressed above. Accordingly, the subsequent arguments are rendered

moot in light of Examiner establishing that Higgins et al. does disclose accessing project

data consisting of a plurality of *actions to be performed*.

Therefore, Applicant's arguments have been fully considered, but are found

unpersuasive. The rejections to claims 1-18 are maintained and repeated below.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.   Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Higgins et al. (U.S. 6,397,202).

As per claim 1, Higgins et al. discloses risk management software embodied upon a computer-readable medium, the software comprising a set of instructions for the following steps to be performed when the software is executed:

a) accessing project data consisting of a plurality of actions to be performed (col. 3, lines 30-35 and 44-45; col. 5, lines 28-40; col. 6, lines 9-17 and 27-37; Project data includes the quantity of software code to be written or programmed for a given software development project as well as the staffing level to be maintained. Thus, the writing or programming of software code and the maintaining of staffing levels are actions to be performed for a software development project.);

b) analyzing the project data to identify a plurality of activities to at least some of which is assigned at least one risk indicator (col. 5, lines 45-47; col. 6, lines 22-37; Each input, or project requirement, is assigned a risk level based on a comparison of estimated versus actual status at a given point in time. Actual lines of code are compared with planned lines of code and actual staffing levels are compared with planned staffing levels and risk levels are assigned based on the comparisons.);

c) on the basis of one or more mitigating tasks identified to reduce or prevent a

risk or the consequences of a risk, outputting to the project data one or more new

actions or alterations to existing actions in the project data (col. 5, lines 59-62;

col. 6, lines 4-5; col. 6, line 63-col. 7, line 1; Based on identified risk levels,

project managers may take action to mitigate the risk.); and

d) accessing changes to the project data and revising the plurality of activities in

dependence on whether the changes are to actions in the project data resulting

from step c) above (col. 4, lines 11-14 and 63-67; Inputs, or project requirement

data, may be changed automatically or by direction of the project manager.).

As per claim 2, Higgins et al. discloses risk management software as claimed in

claim 1, wherein the changes to the project data are compared with new actions or

alterations to existing actions previously output to the project data and where the

changes to project data relate to actions previously output to the project data no

revisions are made to the plurality of activities (col. 5, lines 31-40 and 59-65; Figures 2

and 3; The system provides an interface for project managers to monitor the progress of

a project as project data is changed and risk levels change.).

As per claim 3, Higgins et al. discloses risk management software as claimed in

claim 1, comprising the step of receiving a trigger from the project data when the project

data has been changed (col. 6, lines 61-67; A project manager is sent an alert when

project data is not at the status it should be, and thus, has changed (i.e., from a

comparison of estimated versus actual status of project requirements).).

As per claim 4, Higgins et al. discloses risk management software as claimed in claim 1, comprising the step of periodically polling the project data to determine whether changes have been made to the project data (col. 4, lines 63-65; col. 5, lines 31-33; Figures 2 and 3; The project data to be evaluated for changes and changes in risk may be manually selected by a project manager or automatically selected by the system at periodic intervals.).

As per claim 5, Higgins et al. discloses risk management software as claimed in claim 1, comprising the further step of automatically outputting a message to one or more predetermined recipients (col. 6, lines 61-67; A project manager is sent an alert when project data is not at the status it should be, and thus, has changed (i.e., from a comparison of estimated versus actual status of project requirements).).

As per claim 6, Higgins et al. discloses risk management software as claimed in claim 5, comprising the further step of automatically outputting a message to one or more predetermined recipients when the consequences of a risk are identified as exceeding a selected threshold (col. 6, lines 61-67; A project manager is sent an alert when project data is not at the status it should be, and thus, has exceeded a predetermined risk threshold.).

As per claim 7, Higgins et al. discloses risk management software as claimed in claim 5, wherein the message is automatically output when the processor receives notice of an impacted risk (col. 6, lines 61-67; A project manager is sent an alert when project data is not at the status it should be, and thus, has impacted the risk level of the project.).

As per claim 8, Higgins et al. discloses risk management software as claimed in claim 1, wherein the risk indicator consists of one or more of a cost allowance and a time allowance (col. 6, lines 19-52; Risk levels are computed by comparing estimated versus actual project status of requirements. A risk level is elevated when the actual cost or time allowance has exceeded the estimated allowance.).

Claims 9-18 recite substantially similar subject matter to claims 1-8 above. Therefore, claims 9-18 are rejected on the same basis as claims 1-8 above.

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Jones et al. (U.S. 6,219,805) discusses a method and system for dynamic risk assessment; and

- Bowman-Amuah (U.S. 6,662,357) discusses a project management system in which risk is assessed and mitigated.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae (formerly, C. Michelle Colon) whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmt
May 13, 2006

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